the unloading is prevented by unavoidable causes. A statute changing the common law modifies it no further than the clear import of its language necessarily implies. *Johnson* v. *Southern Pacific Co.*, 117 Fed. 462. The decisions under this statute give no indication of relieving the carrier of his common-law liability, and uniformly consider its only purpose to be the prevention of cruel treatment of animals in interstate shipments. See *Chesapeake & Ohio Ry. Co.* v. *American Exchange Bank*, 92 Va. 495, 502, 23 S. E. 935, 937. *United States* v. *St. Louis, I. M. & S. Ry. Co.*, 177 Fed. 205. The liability of the carrier in transportation is still left as at common law. See *Missouri Pacific Ry. Co.* v. *Ivy*, 79 Tex. 444, 446, 15 S. W. 692, 693. The court seems to go beyond legitimate bounds in an attempt to cut down the carrier's common-law liability.

CARRIERS — PERSONAL INJURIES TO PASSENGERS — CONTAGIOUS DISEASE OF FELLOW PASSENGER. — The plaintiff sued as administrator for the death of his intestate, alleged to have been caused by contagious disease contracted from a fellow passenger of the intestate on the defendant's railroad. The defendant's conductor had no knowledge of the disease of the fellow passenger. *Held*, that the plaintiff cannot recover. *Bogard's Admr.* v. *Illinois Central R. Co.*, 139 S. W. 855 (Ky.).

A carrier is under a duty to use the highest care to provide safe conveyances, and is liable for injuries to passengers resulting from defects which might have been discovered by the use of such care. *Palmer* v. *President, etc. of Delaware & Hudson Canal Co.*, 120 N. Y. 170, 24 N. E. 302; *International & Great Northern Ry. Co.* v. *Anthony*, 24 Tex. Civ. App. 9, 57 S. W. 897. A carrier is under a duty to use the highest care to protect passengers from foreseeable injuries by their fellow passengers. *Kuhlen* v. *Boston & Northern Street Ry. Co.*, 193 Mass. 341, 79 N. E. 815. It would not be practicable to extend the duty of inspection of conveyances to inspection of passengers. *Cf. Gulf, Colorado & Santa Fé Ry. Co.* v. *Shields*, 9 Tex. Civ. App. 652, 29 S. W. 652. But the duty of the carrier would seem to require the conductor to take precautions when a reasonably prudent man would be so impelled by the facts under his observation. *Cf. Houston & T. C. R. Co.* v. *Phillio*, 67 S. W. 915 (Tex.). Under this view the decision in the principal case may be questioned. But *cf. Long* v. *Chicago, Kansas & Western R. Co.*, 48 Kan. 28, 28 Pac. 977.

CONSPIRACY — CRIMINAL LIABILITY — EFFECT OF GRANTING NEW TRIAL TO ONE DEFENDANT. — A new trial was granted one of several defendants indicted for conspiracy, on errors in no way prejudicial to the others, one of whom appealed. *Held*, that the verdict should stand as to the appellant. *Dufour* v. *United States*, 39 Wash. L. R. 714 (D. C., Ct. App.).

This case follows a recent American decision. *Browne* v. *United States*, 145 Fed. 1. But it is opposed to the weight of authority. *Queen* v. *Gompertz*, 9 Q. B. N. S. 824; *Isaacs* v. *State*, 48 Miss. 234. There seems to be no reason on principle why a new trial should not be given to one conspirator and refused to another, if it is certain that the error affected only the first. As a practical matter it usually will affect both, but by no means necessarily. There is, of course, no repugnancy in acquitting some and convicting others of those jointly indicted for conspiracy. *Jones* v. *Commonwealth*, 31 Grat. (Va.) 836.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — INHERITANCE TAX ON DEPOSITED PROPERTY COLLECTED THROUGH SAFE DEPOSIT COMPANY. — A statute provided that a safe deposit company on the death of a depositor should give the proper state officials ten days' notice before delivering over the property deposited to the legal representatives of the deceased and should retain a sufficient amount thereof to pay an inheritance tax on such property or be

liable to a penalty. *Held*, that the provision is not unconstitutional. *National Safe Deposit Co.* v. *Stead*, 95 N. E. 973 (Ill.).

The statute was objected to as impairing the obligation of the company's charter, as depriving it of liberty and property without due process of law, as subjecting the property to unreasonable searches and seizures, and as devoting the property, by delaying its delivery, to a public use without just compensation. On the death of the depositor the company would seem to hold the property as a bailee for the state and other parties entitled, as tenants in common, since an inheritance tax statute vests a property right in the state at the death of the decedent. *In re Estate of Graves*, 242 Ill. 212, 89 N. E. 978; *Estate of Stanford*, 126 Cal. 112. The view taken by the court, therefore, that the effect of the statute was merely to require a bailee to give notice to a part owner to be present at the distribution of the bailed property and to deliver to such owner his proportionate share, would seem to be justifiable, and renders all the objections taken invalid. The case is but an instance of the right of the state in certain cases for convenience and greater certainty to collect a tax by indirection through a third party. *Commonwealth* v. *D. & H. Canal Co.*, 150 Pa. St. 245, 24 Atl. 599. See *Monticello Distilling Co.* v. *Mayor, etc. of Baltimore*, 90 Md. 416, 427, 45 Atl. 210, 212.

CONTRACTS — SUITS BY THIRD PERSONS NOT PARTIES TO CONTRACT — CONTRACT WITH CITY TO ANSWER FOR DAMAGES TO PROPERTY OWNERS. — Property abutting on the route of a subway was damaged because of the improper methods of construction employed by a sub-contractor. The original contractor had contracted with the city to be answerable for such damages. *Held*, that the city is not, and the original contractor is, liable in damages to the owner of the abutting property. *Smyth* v. *City of New York*, 203 N. Y. 106.

This case extends somewhat the doctrine of *Lawrence* v. *Fox*, 20 N. Y. 268. Hitherto, in New York, the beneficiary could, in general, sue upon the contract only when he was owed some duty by the promisee. *Durnherr* v. *Rau*, 135 N. Y. 219. An exception was made when the defendant had violated the terms of its public franchise. *Pond* v. *New Rochelle Water Co.*, 183 N. Y. 330. Also the beneficiary might sue if the defendant had been negligent while performing a contract to fulfil a function of the state. *Robinson* v. *Chamberlain*, 34 N. Y. 389. In these cases there could have been a recovery apart from the contract, either on the public service law, or for personal negligence. In the principal case there was no liability except upon the contract. A majority of the jurisdictions in this country follow *Lawrence* v. *Fox*, but of these, only New York and Minnesota deny recovery to a "sole beneficiary." *Durnherr* v. *Rau*, *supra*; *Jefferson* v. *Asch*, 53 Minn. 446. Courts allowing recovery by the "sole beneficiary" attain the correct result, but as the doctrine of permitting the third party to sue at law upon such a contract is wrong in principle, the conclusion is reached in an improper way. See 15 HARV. L. REV. 767, 772–775, 780–785.

CONTRACTS — SUITS BY THIRD PERSONS NOT PARTIES TO CONTRACT — SUIT IN EQUITY BY CREDITOR OF PROMISEE. — A. conveyed assets to B. in return for B.'s promise to pay the debts of A. B. conveyed the same assets to C. in return for C.'s promise to pay the same debts. *Held*, that a creditor of A. can recover from C. in equity. *Forbes* v. *Thorpe*, 95 N. E. 955 (Mass.).

In Massachusetts a creditor cannot sue at law on a contract made for his benefit by the debtor. *Morril* v. *Lane*, 136 Mass. 93; *Borden* v. *Boardman*, 157 Mass. 410, 32 N. E. 469. So rigidly has this rule been observed, that of all the American jurisdictions, including those which ordinarily deny the creditor a right of action, Massachusetts alone refuses to allow a mortgagee to proceed against a grantee who has assumed the mortgage debt. *Mellen* v. *Whipple*,